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SPECIAL COMMITTEE ON THE CHARTER OF
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STRENGTHENING OF THE ROLE OF
THE ORGANIZATION
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Revised proposal submitted by the delegation of Cuba to the Special Committee on the Charter of the United Nations at its 1997 session[1]

STRENGTHENING OF THE ROLE OF THE ORGANIZATION AND ENHANCING ITS EFFECTIVENESS

The delegation of Cuba considers that, in accordance with its mandate and responsibility, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization has an important task to do, namely, to contribute, actively and effectively, to the reform of the Organization.

The purpose of this working paper is to develop one of the aspects contained in the revised proposal submitted by Cuba to the Special Committee on the Charter at its 1997 session, specifically that concerning **the responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security.**

In the view of the Cuban delegation, discussion of this issue could help the Special Committee to undertake, within the context of the reform, revitalization and democratization of the United Nations, a necessary analysis of some aspects of the respective tasks and responsibilities of the Security Council and of the General Assembly in respect of the maintenance of international peace and security, and of the principal causes and consequences of the relationship between these two principal organs of the Organization.

Responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security

The process of democratization of the United Nations today faces a great challenge that is rooted in the distribution of power and responsibility between

the General Assembly and the Security Council, and in the interrelationship between these two organs.

The overwhelming majority of Members of the Organization are of the opinion that the General Assembly has been marginalized, that it has been relegated to second place in terms of its role and principal functions and that it has been prevented from dealing with priority issues of importance to the life and operation of the Organization.

New concepts such as humanitarian intervention, preventive diplomacy, economic and political conditionalities, sanctions and world government reflect this reality.

Accordingly, it is in the interest of the majority of Members of the Organization, to examine the functions and responsibilities of the General Assembly and of the Security Council, with a view to ensuring that the General Assembly is able to effectively carry out its broad mandates and functions and with a view to promoting greater democracy and representativeness in the work of the Security Council.

It could be said that, in recent years, the Security Council has appropriated to itself responsibilities that have implications for the separation of powers outlined in the Charter.

The Security Council has authorized and carried out numerous military interventions inside the borders of Member States.

To that end, the Council has engaged in extensive, unilateral interpretations of the letter and spirit of **Chapters VI, VII and VIII** of the Charter.

It cannot be claimed that the Charter confers on the Security Council exclusive responsibility for the formulation of principles and policies to guide the action of the Organization.

Articles 10 and 11 of the Charter clearly recognize that such responsibility rests with the General Assembly, as the **organ specifically charged with developing such general principles and policies**.

After giving a broad interpretation of **Article 13, paragraph (1) (a)**, of the Charter, the Council has taken upon itself the responsibility for establishing international criminal tribunals as part of the progressive development of international law.

And yet **Article 13, paragraph (1) (b)**, of the Charter, explicitly assigned responsibility for **"assisting in the realization of human rights and fundamental freedoms"** to the General Assembly.

All too often, the Security Council is given responsibility for "preventive action" and "preventive intervention" and is thereby transformed into a kind of "economic security council".

Any careful reading of the Charter shows that in **Articles 10, 11, 14, 55 and 65** the area of "economic security" was explicitly assigned to the General Assembly and to the Economic and Social Council.

Nowhere in the Charter is it stated that the Security Council has authority to take initiatives in this area.

On the contrary, according to **Article 10 and Article 11, paragraph 2,** of the Charter, **the General Assembly may decide when to refer a situation to the Security Council**, and **Article 65** mandates the Economic and Social Council to **furnish information to the Security Council and to assist the Security Council upon its request.**

Broad authority and responsibility of the General Assembly

There are many examples which could be cited to demonstrate that the General Assembly has broad authority and responsibility and that its broad powers have for the most part never been fully used or exercised.

- **Article 10** of the Charter authorizes the General Assembly to **"discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter".**

It does not confer such authority on any other organ; accordingly, no one should try to claim that the Security Council has equal status.

- **Article 11, paragraph 1**, of the Charter mandates the General Assembly to **"consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments".**

- According to **Article 13, paragraph (1) (a),** of the Charter, the General Assembly **can undertake studies and "make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification".**

No other organ of the United Nations is mandated under the Charter to consider or to establish general principles and policies with regard to international peace and security.

- According to **Article 12, paragraph 1,** of the Charter, the General Assembly **shall not make any recommendation with regard to a dispute or situation which is being considered by the Council.**

Nevertheless, the Charter does not prevent the General Assembly from discussing any question, dispute or situation under consideration by the Security Council, nor does it rule out the possibility of the majority of Member States expressing their opinion on actions proposed by the permanent members of the Council.

- As stipulated in **Articles 10 to 14** of the Charter, the peaceful settlement of disputes is a shared responsibility of the General Assembly and the Security Council.

The General Assembly has even been granted the power to send fact-finding missions, as reflected in resolution 46/59 of 9 December 1991.

- **Article 15, paragraph 1**, of the Charter requests the Security Council **to submit annual and special reports** to the General Assembly on its efforts to maintain international peace and security.

This means that the General Assembly may at any time, by virtue of the broad power granted to it under the Charter, request the Council to provide it with truly substantive reports on the measures that the Council has decided to take to maintain international peace and security.

- **Article 24, paragraph 1**, of the Charter provides that the **"Members confer on the Security Council the primary responsibility for the maintenance of international peace and security, and agree that ... the Security Council acts on their behalf".**

The only organ of the United Nations in which the **"Members"** (as stipulated in **Article 24, paragraph 1**, of the Charter) are represented is the General Assembly. Accordingly, the General Assembly is the only organized multilateral source from which the basic mandates conferred on the Security Council emanate.

- Two thirds of the members of the Security Council are elected by the General Assembly. This shows that the Security Council depends on the General Assembly for its very existence and functioning.

- As stipulated in **Article 24, paragraph 2**, of the Charter, in discharging its duties, the Security Council **"shall act in accordance with the Purposes and Principles of the United Nations".**

If the Members of the United Nations deem or consider that the Council is not prepared to act in accordance with the purposes and principles of the Organization, such a judgement could invalidate the procedural restriction contained in **Article 12, paragraph 1**, of the Charter, and make it possible to ensure that the decisions of the Security Council truly reflect the will of the majority of Members of the Organization.

- The Security Council can decide upon or authorize a peacekeeping operation or another military action.

Nevertheless, as stipulated in **Article 17, paragraph 2**, of the Charter, only the General Assembly can approve the expenses and the budget for such purposes.

This shows that in financial terms, for example, the Assembly can adopt binding measures in relation to decisions or resolutions of the Security Council.

- A permanent member of the Security Council can veto a proposal to amend the Charter.

Nevertheless, only the General Assembly can adopt an amendment to the Charter.

Article 109, paragraph 1, of the Charter confers explicitly on the General Assembly the power to hold a General Conference **"for the purpose of reviewing the Charter at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council".**

The submission by the General Assembly of a vitally necessary amendment to the Charter and its subsequent veto by one or more permanent members of the Security Council would not infringe upon the authority of the Assembly, but would simply illustrate in a dramatic way the arrogance of power and the inertia existing within the Security Council.

Cuba believes that any analysis and review of the real relationship of power and authority between the Security Council and the General Assembly would reveal the full extent of the difference between what the majority of States Members of the United Nations, represented in the General Assembly, is doing now and what it could do.

Any analysis and review of the responsibility of the Security Council and of the General Assembly for the maintenance of international peace and security would show that the responsibility and powers of the General Assembly have been undermined as a result of flagrant violations of the letter and spirit of the Organization's Charter.

Cuba believes that it will not be possible to talk about a real and constructive process of reform and revitalization of the Organization unless a reform is promoted which makes the United Nations more democratic, re-establishes the principles of the Charter in its practices, democratizes the Security Council and reinstates the powers of the General Assembly that are now being usurped or diminished.

The Special Committee has the important task of contributing to a reform process which ensures that every action of the United Nations and its main organs reflects the sovereign equality of all Member States.

Notes

[1] Official Records of the General Assembly, Fifty-second session, Supplement No. 33 (A/52/33), paras. 59-74.